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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/558,570	04/26/2000	Todd A. Kuiken	P1308USA	9521

8968 7590 02/12/2002

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EXAMINER

SNOW, BRUCE EDWARD

ART UNIT PAPER NUMBER

3738

DATE MAILED: 02/12/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/558,570

Applicant(s)

Examiner

Bruce Snow

Art Unit

3738



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Jan 8, 2002
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above, claim(s) 4-9, 11-17, and 20-22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 10, 18, and 19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- *See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
- 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: _____

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Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

Claims 1-2 are rejected under 35 U.S.C. 102(e) as being anticipated by Wilkinson

(6,053,946). Wilkinson teaches a prosthetic foot comprising a frame having a first and second axis, such as the longitudinal axis of portion 76; a connector 94 which is adapted to rotate about the said axis; and a footplate 90.

Claims 1, 3, 10, 18-19 are rejected under 35 U.S.C. 102(e) as being anticipated by Wilson

(5,116,384). Wilson teaches a prosthetic foot comprising a frame including element 48 having a first and second axis; a connector including elements 16, 30 which is adapted to rotate about the said axis; a footplate 12; means for controlling the rotation includes elements 64, 66.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wilkinson.

Wilkinson discloses the invention as described above; however, is silent in regards to the materials used for the frame. It is well known in the art to utilize high strength polymer and composite material for any portion of a prosthetic foot and would have been obvious to one having ordinary skill in the art to have utilized it for the foot of Wilkinson for its known strength and resiliency.

Response to Applicant's Arguments

Applicant's arguments filed 1/8/02 have been fully considered but they are not deemed to be persuasive.

Applicant's argument with respect to the Wilkinson reference is not deemed persuasive. Any three dimensional object can be defined having multiple axes, i.e. x, y, z. Applicant first and second axes as required in claim 1 could be any axis; applicant's claim language does not imply that the frame is a tubular L-shape having two longitudinal axis, one for each leg of the "L". Referring to figure 4, the connector (not shown) is rotating about the z-axis (coming out of the page) with the up and down movement of the toe.

Applicant's argues that the device taught by Wilson does not have a connector which is capable of rotating about an axis of the frame (including the longitudinal axis required in claim 10). This is not correct. A natural foot is capable of rotation about all axis via the ankle. This is the objective of Wilson as summarized in column 2, lines 45-49, "*the combination of ball joints, rigid anterior pylon, flexible plantar and dorsal members, and interconnecting motion resisting*

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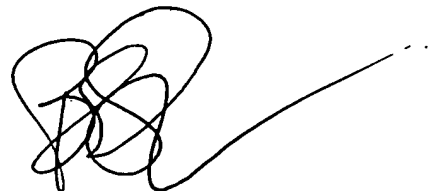
dampers closely simulates the action and feel to the user natural foot." Applicant cited column 4, lines 24-27 but failed to read the sequential lines 28 et seq. *"Because the damper 44 is not rigid but made of resilient material, a very limited rotation of the ball 24 about the x and y axes is also allowed."* This limited rotation is to simulate the action of a natural foot. The Examiner would define element 44 as a "means for controlling rotation".

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

Any inquiry concerning this communication should be directed to Bruce Snow at (703) 308-3255. Should the examiner not be present, Applicant may call the Examiner's Supervisor Corrine McDermott (703) 308-2111.

B. Snow
February 12, 2002

A handwritten signature in black ink, appearing to be 'B. Snow', with a long horizontal line extending to the right.

Bruce E. Snow
Primary Examiner
Group 3700